



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	SB 1607
Tax:	Property	Author:	Machado
Related Bills:			

BILL SUMMARY

This Board of Equalization (Board) sponsored bill would:

- Modify the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use its property to hold weekly meetings without jeopardizing the property tax exempt status of the property. The meeting holder user would only need to provide a valid tax exemption letter. *§214*
- Include governmental entities as qualifying members of a limited liability company, consistent with Property Tax Rule 136, and insert and move the phrase "limited liability companies" in various locations in Revenue and Taxation Code Section 214¹ to correct omissions and misplacement of the phrase. *§214 and §214.8*
- Expressly provide that the Board review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements. *§254.5 and §254.6*
- Change the deadline for filing an appeal with the Board on publicly owned taxable property ("Section 11 appeal") from the "Third Monday in July" to "July 20." *§1840*

This bill also includes a non-Board sponsored provision to:

- Modify Legislative Intent language related to the step transaction doctrine and the parent-child change in ownership exclusion to expressly provide that it also extends to transfers eligible for the grandparent-grandchild exclusion. *Uncodified: Section 2 of Chapter 48 of the Statutes of 1987 (Relating to §63.1)*

ANALYSIS

Welfare Exemption

Revenue and Taxation Code Sections 214 and 214.8

Current Law

Charitable Use - Meetings Held by Other Nonprofits. In 2003 legislation was enacted to improve the joint administration of the welfare exemption by the Board and local county assessors. To eliminate the prior duplication of effort, duties were separated between the functions of organization eligibility, which is determined by the Board, and qualifying uses of property, which is determined by the assessor. In addition, it simplified the welfare exemption filing process by reducing the amount of paperwork nonprofits file annually, especially for those owning property in multiple counties. Nonprofit organizations that own property now apply to the Board for an

¹ All section references are to the Revenue and Taxation Code unless otherwise noted.

“organizational clearance certificate” which is granted if the nonprofit meets the organizational requirements for the welfare exemption. This certificate is filed with the assessor of the county where the property is located and indicates the organization is eligible for the exemption provided it uses the property for qualifying purposes. Previously, a variety of documents such as articles of incorporation, financial statements, and tax exemption letters were required to be filed in duplicate in every county where the nonprofit owned property.

Relevant to this bill, the law generally allows a nonprofit organization that owns property receiving the welfare exemption to allow *other* nonprofit organizations (those exempt under either 501(c)(3) or 501(c)(4) of the Internal Revenue Code) to use its facilities to hold meetings no more than once per week without jeopardizing the tax exempt status of the property. The streamlining legislation inadvertently changed the documentation related to the use of a property for weekly meeting purposes by other nonprofit organizations to the organizational clearance certificate. Previously, only a copy of a valid tax exemption letter from the meeting holder was necessary.

Limited Liability Companies. Beginning January 1, 2005, the law allows property owned by a limited liability company (LLC) in which the members are qualifying organizations to qualify for the welfare exemption. Property Tax Rule 136, also effective January 1, 2005, provides that a governmental entity can be a qualifying member of a LLC.

Proposed Law

Charitable Use - Meetings Held by Other Nonprofits. This bill would amend Section 214 (a)(3)(D) to reinstate the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use its property to hold weekly meetings without jeopardizing its tax exempt status. This bill would require that a copy of a valid tax exemption letter be provided rather than a copy of an organizational clearance certificate.

In addition, this bill reverses an unintentional substantive amendment to Section 214 by an annual maintenance of the code bill. SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the maintenance of the code bill for 2001, substituted the word “of” for “or” in the last sentence of subparagraph (D) of paragraph (3) of subdivision (a) of Section 214.

Limited Liability Companies - Government Entities. This bill would amend Section 214.8 to include governmental entities as qualifying members of a LLC, consistent with Property Tax Rule 136. This bill would also insert and move the phrase “limited liability companies” in various locations in Section 214 to correct omissions and misplacement of the phrase.

Background

Charitable Use - Meetings Held by Other Nonprofits. AB 3022 (Stats. 1990, Ch. 161, Klehs) added subparagraph (D) to paragraph (3) of subdivision (a) to Section 214 to allow weekly meetings held by 501(c)(3) and (c)(4) tax exempt organizations to be an acceptable use of property receiving the welfare exemption.

Streamlining Welfare Exemption Administration. SB 1062 (Stats. 2003, Ch. 471, SR&T Committee) amended statutory provisions relating to the welfare exemption to streamline the administration of the exemption by eliminating duplicative review

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functions performed by the assessors and the Board. These changes were effective on January 1, 2004.

Limited Liability Companies. AB 3073 (Stats. 2004, Ch. 354, SR&T Committee) amended statutory provisions relating to the welfare exemption to allow an exemption to qualifying LLCs and their properties. Section 214 (k) specified that the Board adopt a regulation to specify the ownership, organizational, and operational requirements for LLCs. The Board adopted [Property Tax Rule 136](#) effective January 1, 2005. It specifies that a governmental entity is a qualifying member of a LLC for purposes of qualifying for the welfare exemption. It reads, in pertinent part:

(b)(2) QUALIFYING ORGANIZATION. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities under subdivision (d). A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other members are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code.

Comments

1. **Sponsor and Purpose.** The Board is sponsoring this provision as a housekeeping measure to correct technical deficiencies in existing law.
2. **Allowing other nonprofits to use a facility to hold weekly meetings is an acceptable charitable use of a property receiving the welfare exemption.** Requiring the meeting holder to provide an “organizational clearance certificate” was an unintended drafting error in the streamlining legislation of 2003. If followed, it would create additional paperwork filing requirements on a nonprofit that does not own property but instead only uses a property owned by another nonprofit that does hold an organizational clearance certificate. Additionally, 501(c)(4) tax exempt organizations are not able to obtain an organizational clearance certificate since only 501(c)(3) tax exempt organizations are eligible for the welfare exemption. This bill is consistent with prior statutory requirements and current administrative practice.
3. **Technical amendment to reverse an annual maintenance of the code amendment that substituted the word “of” for “or.”** This bill reverses an unintentional substantive amendment to Section 214 by SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the annual maintenance of the code bill for 2001. Related to providing a copy of a valid tax exemption letter for weekly meeting holders to the assessor, the law previously provided that: “The owner or the other organization shall also file with the assessor...” and now it reads “The owner of the other organization shall file with the assessor...”. Usually, there is little or no direct contact between the assessor and a meeting holder (i.e., “the other organization”) because they are not required to file an annual welfare exemption claim. In reviewing the claim filed by the nonprofit owner of the property, the assessor verifies that the property is used exclusively for charitable purposes and it is in this connection that a tax exempt letter from the meeting holder may be required. The tax exempt letter could be obtained from *either* the meeting holder or the property

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owner – who likely requires a copy of the letter for its files as a condition of allowing the use of its property for meetings so it can protect its tax exempt status.

4. **A government entity can be a member of an LLC for purposes of qualifying for the welfare exemption.** In developing Property Tax Rule 136 it was found that some local governments have entered into joint ventures with nonprofit organizations to own and operate property. Each member of the LLC, the local government and the nonprofit, is eligible for a property tax exemption if they own the subject property separately, either as government owned property or welfare exemption property, respectively. Property Tax Rule 136 was drafted to expressly recognize these joint ventures and this bill makes conforming amendments to Section 214.8.

Veterans' Organization Exemption

Revenue and Taxation Code Sections 254.5 and 254.6

Current Law

Revenue and Taxation Code Section 215.1 provides for the exemption of all buildings, and the real property required for the convenient use and occupation of the exempt buildings, owned by a veterans' organization which has been chartered by the Congress of the United States and is organized and operated for charitable purposes. The exemption applies when the premises are used and operated exclusively for charitable purposes by the organization and are not being conducted for profit and no part of the net earnings of the operation inures to the benefit of any private individual or member of the organization. This exemption is popularly known as the veterans' organization exemption and it is jointly administered by the Board and the local county assessor.

Effective with claims filed on or after January 1, 2004, the Board determines whether the organization is eligible to receive the veterans' organization exemption and the county assessor determines whether the use of the property is eligible for the exemption. If the Board determines that an organization is eligible, the Board issues an Organizational Clearance Certificate for the claimant to provide with exemption claim forms filed in any of the 58 counties.

Claims for the veterans' organization exemption must be filed annually with the county assessor in the county in which the organization's property is located. Claims are made on form [BOE 269-AH \(Claim for Veterans' Organization Exemption\)](#). The assessor may not grant a claim unless the organization holds a valid Organizational Clearance Certificate issued by the Board.

Proposed Law

Senate Bill 1062 (Stats. 2003, Ch. 471) amended various statutory provisions relating to both the welfare exemption and the veterans' organization exemption to streamline the administration of these exemptions by eliminating duplicative review functions performed by the assessors and the Board. However, while the modifications were made for both exemptions, two sections of code were not updated to reflect the changes made to the administration of the veterans' organization exemption which this bill would correct.

This bill would amend Sections 254.5 and 254.6 to expressly provide that the Board staff review claims for organizational clearance certificates for the veterans' organization

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exemption and issue the certificates to organizations that meet the requirements of Section 215.1.

Comment

Sponsor and Purpose. The Board is sponsoring this provision to correct omission of language in the original exemption streamlining legislation, SB 1062, related to organizations seeking the veterans' organization exemption.

Section 11 Appeals

Revenue and Taxation Code Section 1840

Current Law

Property owned by a local government is generally exempt from property taxation. However, some government owned property is subject to property tax and is assessed by the county assessor of the county where the property is located. Specifically, Article XIII, Section 11 of the California Constitution generally provides that real property owned by a local government that is located outside its boundaries is taxable if taxable when acquired, and specifically prescribes a method for the valuation of taxable government owned lands.

Section 1840 provides that if the governmental entity that owns the taxable property disagrees with the assessed value of the property determined by the local county assessor, it may file an appeal with the Board of Equalization to review the assessment. In all other instances, property tax appeals of locally assessed property are filed with the local assessment appeals board. These appeals of locally assessed property to the Board are commonly referred to as "Section 11 appeals."

Section 1840 provides that the third Monday in July is the final deadline to file a Section 11 appeal. Related to state assessee property tax appeals, Section 731 provides that the final deadline is July 20.

Proposed Law

This bill would, in part, amend Section 1840 to change the deadline to file a Section 11 appeal with the Board from the third Monday in July to July 20. This would conform the final filing date with that for a state assessee to file a property tax appeal with the Board.

Comments

1. **Sponsor and Purpose.** The Board is sponsoring this legislation to conform the petition filing deadline in Section 1840 for filing property reassessment petitions on publicly-owned property, i.e., Section 11 appeals, with the deadline in Section 731 for filing a petition for a state assessed unitary property reassessment.
2. **Related Legislation.** In 2000, the Board sponsored legislation amending various sections of code to simplify the petition filing process and deadlines for appeals of assessments and allocations of state assessed properties. (SB 2170, Stats. 2000, Ch. 647). As a result, the appeals deadline for state assessees is July 20. The filing deadline for Section 11 appeals with the Board was not modified to conform to the new deadline.

Grandparent–Grandchild Transfers and the Step Transaction Doctrine *Section 2 of Chapter 48 of the Statutes of 1987*

Current Law

Section 63.1 provides a change in ownership exclusion for transfers between parents and children, and in limited instances, between grandparents and grandchildren. Because the exclusion only applies to transfers of “real property” as opposed to transfers of legal entity interests, the Legislature provided uncodified legislative intent language in Section 2 of the Statutes of Chapter 48 addressing the step transaction doctrine.

Proposed Law

This bill would amend the uncodified legislative intent language to expressly provide that its provisions extend to the grandparent-grandchild exclusion.

Comment

Sponsor and purpose. This provision is sponsored by the author to expressly state that the uncodified language also extends to the property transfers between grandparents and their grandchildren.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the law changes and addressing ongoing implementation issues and questions. These costs are estimated to be under \$10,000.

REVENUE ESTIMATE

This bill has no revenue impact.

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